United Nations CCPR/C/SR.2366

International Covenant on Civil and Political Rights

Distr.: General
10 April 2006

Original: English

Human Rights Committee
Eighty-sixth session

Summary record of the second part (public)* of the 2366th meeting
Held at Headquarters, New York, on Thursday, 30 March 2006, at 3 p.m.

Chairperson: Ms. Chanet

Contents

Follow-up on Views under the Optional Protocol

Progress report of the Special Rapporteur for Follow-up on Views

* No summary record was prepared for the first part (closed) of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

06-29169 (E)

The second part (public) of the meeting was called to order at 4.50 p.m.

Follow-up on Views under the Optional Protocol

Progress report of the Special Rapporteur for Follow-up on Views (CCPR/C/86/R5)

1. **Mr. Ando** (Special Rapporteur for Follow-up on Views) introduced his report, which compiled information received during the eighty-fifth and eighty-sixth sessions of the Committee. He wished to request decisions from the plenary in relation to two cases.

2. In the case of Ahani v. Canada (Communication No. 1051/2002 (pp. 11-12)), noting that following the author's deportation to Iran the Canadian authorities had followed his situation closely, he proposed that the Committee's comments should indicate that the State Party's response had been satisfactory and the Committee did not intend to consider the matter any further.

3. Turning to the case of Siragev v. Uzbekistan (Communication No. 907/2000 (pp. 29-30)), he recalled that the Committee had recommended commutation of the death penalty, further reduction of the sentence and compensation. Although the State party maintained the correctness of the decision of its Supreme Court, the author's sentence had been commuted as a result of a presidential amnesty and he was to have been released in December 2005. Given those circumstances, the Committee's comment should perhaps indicate that the Committee considered the State Party's response satisfactory and did not intend to consider the matter any further.

4. **Mr. Wieruszewski** said he could not agree that Uzbekistan's response had been satisfactory; although the author had been released, the State party continued to reject the Committee's views. That was unacceptable, and since the report would become a public document, the Committee must express its dissatisfaction with the State party's attitude.

5. **Mr. Shearer** agreed that the State party's response was unsatisfactory. He suggested that in the Committee's comment, the words "satisfactory and" should be deleted and replaced with "unsatisfactory, but in view of the commutation of the author's sentence".

6. **The Chairperson** said that since the State party's response was unsatisfactory the Committee should keep the case under consideration.

7. **Sir Nigel Rodley** suggested trying to find some middle ground; although the State party's response could certainly not be considered satisfactory, the end result had been more or less what the Committee wished, and it would not be terribly productive to use the word "unsatisfactory". The Committee's comment should be based on the facts. He therefore suggested that, in the Committee's comment, the words "the State party's response satisfactory and" should be deleted and replaced with "that in the light of the information on the commutation of the author's sentence and his release, the Committee". The Committee would thereby avoid having to decide whether or not to continue considering the matter solely on the basis of whether or not the State party's response was satisfactory or unsatisfactory; regardless of the attitude of the State party or its courts, the Committee had sufficient information and grounds to find the outcome acceptable and to decide not to consider the matter any further.

8. **Mr. Wieruszewski** said that, although he could support Sir Nigel Rodley's suggestion, it might be preferable to continue the Committee's consideration of the matter with a view to sending a message to the State party that, although the final outcome had been positive, the Committee did not agree with its position or that of its courts, and that in future due account should be taken of the Committee's Views.

9. **Mr. Lallah** said he agreed with Sir Nigel Rodley that the deciding factor should be the final outcome. Calling the State party's response unsatisfactory or continuing consideration of the matter could make the Special Rapporteur's work difficult; given the fact that the author had been released, the Special Rapporteur would have little leverage with the State party in trying to make it admit any fault or pay compensation. The author had been released which was what the Committee wished, so the Committee should take advantage of that way out.

10. **Sir Nigel Rodley**, turning to the case of Ahani v. Canada (Communication No. 1051/2002 (pp. 11-12)) said there had been no real improvement since the State party's previous unsatisfactory response, the State party had last spoken with the author's mother in October 2003, and he found the reference to possible

assistance from the Special Rapporteur on torture almost offensive. Although the Committee should decide not to consider the matter any further, given that no adverse information had been received, he did not believe that the Committee's comments should describe the State Party's response as satisfactory.

11. **Mr. Bhagwati** expressed support for Sir Nigel Rodley's position.

12. **The Chairperson** said the State party's response was certainly not satisfactory; moreover, she found the reference to the Special Rapporteur on torture very flippant. The Committee's comments should be amended to read "The Committee does not intend to consider this matter any further in the current circumstances under the follow-up procedure but may take it up again in the future if circumstances warrant".

13. **Mr. Wieruszewski** expressed concern that precise information on the status of cases was not always available. For example, in the case of Ominayak v. Canada (Communication No. 167/1984 (pp. 10-11)) he wondered if there were any new factual elements, with regard to the case of Malakhovsky and Pikul v. Belarus (Communication No. 1207/2003 (pp. 8-10)), the State party continued to refute the Committee's Views yet despite the apparent lack of any new information, the State party's response had been sent to the author for comment. He asked if there was any point in sending the State party's response to the author if there was no new information and wondered whether the Committee needed to review its procedures for follow-up on Views.

14. **The Chairperson** noted that the Bureau agreed with the need to review follow-up procedures and was asking interested experts to sign up to participate in discussions on how to make follow-up procedures more effective. With a view to having the progress report as up-to-date as possible, it could be noted, for example, that the Committee had raised the case of Ominayak v. Canada (Communication No. 167/1984) in its concluding observations on the last periodic report of Canada in October.

15. **Sir Nigel Rodley** said the current procedure seemed to be that either the Committee was satisfied, at least on the facts, or the response had been unsatisfactory, in which case consideration of the matter would continue. With regard to the Malakhovsky and Pikul v. Belarus case (Communication No. 1207/2003), perhaps the comment could be worded to express the Committee's regret at the State Party's refusal to address the issue of the compatibility of the application of its legislation with the Covenant, although any amendment could likewise be postponed pending the Committee's review of its follow-up procedures.

16. **Mr. Lallah**, referring to the Ominayak case, said he supported the Chairperson's suggestion that the Committee's observations on its dialogue with Canada should be included in the comments section. It would also be useful to include the date when the State party had been requested to provide an update, although only if the request had been made subsequent to the dialogue with the State party.

17. **The Chairperson** said that the request had been made after the dialogue and the date could therefore be mentioned.

18. **Sir Nigel Rodley**, referring to the Malakhovsky and Pikul v. Belarus case, asked for clarification on the Committee's options, as he did not wish to confuse the situation or make any new departures before the Working Group on Communications had commented.

19. **Mr. Ando** said that, as the Committee was aware, the follow-up procedure had developed gradually for more than 10 years. Unfortunately, the main obstacle to the Special Rapporteur's carrying out his mandate was the reluctance of States to respond honestly or at all. In most of the cases under discussion, reminders had been sent to the State party several times, and yet the Committee continued to await a reply. Although there might be ways to make the procedure more effective, it was difficult to move forward in the absence of responses from Governments.

20. **The Chairperson** said that the Committee understood the difficulties involved in carrying out the Special Rapporteur's mandate. Nonetheless, a number of positive results had been achieved, and improvements had been made to the procedure, namely the systematic follow up of pending cases during the dialogue on periodic reports with State party delegations, and the inclusion of references to Views in the concluding observations. The Committee should adopt the practice of citing cases of uncooperative States parties at press conferences, while ensuring no discrimination between States. Follow-up missions should also be carried out, and indeed the necessary funding had been provided but had since been re-allocated. The legal nature of the Optional Protocol

should be studied by the Working Group when it considered ways of improving the follow-up procedure.

21. As to Belarus, Sir Nigel Rodley's suggestion might not be viable given that the State's reply had recently been sent to the author for comment.

22. **Sir Nigel Rodley** said that his remarks on discontinuing the case had clearly been premature. Nonetheless, he was sympathetic to Mr. Wieruszewski's position and pointed out that the author was in no better position than the Committee to comment on such a response by the State party. He endorsed the Chairperson's views that the follow-up procedure had become professionalized to the extent that the Committee was comfortable to have it in the public domain.

23. **The Chairperson** suggested that the Committee should strengthen its comments to read "the Committee notes that the State party is maintaining its position that the court decisions were in compliance with domestic law. The Committee notes that the State party is not responding to the Committee's conclusions that it is the legislation that is contrary to the Covenant."

24. **Mr. Schmidt** (Team Leader, Petitions Unit) said that one reason why unsatisfactory replies from States parties had not led to the termination of follow-up proceedings was that it had been found useful, in combination with the concluding observations and the mandates of the Commission on Human Rights, to keep a degree of pressure on the State party on various fronts. In respect of Belarus, for example, the Commission on Human Rights Special Rapporteur on the situation of human rights in Belarus had requested the relevant observations of the Human Rights Committee and other treaty bodies that might be useful on visits to the State party. Similarly, on the High Commissioner's recent trip to the Russian Federation, a number of Russian Views pending follow-up had been included in her briefing notes, and she had undertaken to raise them with the authorities, which would not have been possible had the cases been closed.

25. In its concluding observations on the Democratic Republic of the Congo adopted at the current session, the Committee had suggested a follow-up mission. On receipt of the observations, the Office of the High Commissioner for Human Rights field office in Kinshasa had immediately organized a follow-up workshop with the Government, to be held in the summer.

26. **The Chairperson** said that the case of the Democratic Republic of the Congo was a good example of how the follow-up procedure, in conjunction with other procedures, could yield positive results.

27. **Mr. Lallah** said that the fact that the report on follow-up formed part of the Committee's annual report presented before the General Assembly constituted an additional form of pressure on States parties.

28. **Mr. Solari Yrigoyen** requested clarification on the status of a number of cases that were not included in the report, most notably the Colombian case submitted by Mr. Jiménez Vaca.

29. **Mr. Schmidt** (Team Leader, Petitions Unit) said that that case had been mentioned in a press release and at the end-of-session press conference in October, and notes verbales had accordingly been sent to the Government. However, no information had been received since then from the Government, and the progress report dealt only with information received since the last session. However, the Colombian case, and others not mentioned in the interim report, would be included in the chapter on follow-up in the annual report.

30. *The recommendations contained in the progress report of the Special Rapporteur for Follow-up on Views were approved.*

The meeting rose at 5.40 p.m.